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WHO WILL ENTER THE UNITED STATES?
IMMIGRATION REFORM AND THE POLICY PROCESS

Laurie Johnston
National War College
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On November 6, 1986, President Reagan signed into law a major revision of U.S. immigration law aimed at solving the "problem" of illegal immigration. The Immigration Reform and Control Act of 1986 (also known as the IRCA) established penalties for employers who knowingly hire aliens not authorized to work in the U.S., gave legal status to certain illegal aliens already in the U.S. and made provisions for temporary agricultural workers. The IRCA also authorized additional funds for the Immigration and Naturalization Service (INS) and made other minor changes in the existing system for legal immigration.

In this paper I will examine the policy process which led to passage of the IRCA, using the three conceptual models developed by Graham Allison--the Rational Policy model, the Organizational Process model and the Bureaucratic Politics model. I will look at the policy process through the prism of each model and assess the relevance of each in understanding the outcome.

First, however, a look at how we got to the 1986 legislation. Concern in the U.S. about illegal immigrants, i.e. people crossing the border without inspection or people overstaying temporary visas, has gone through cycles in recent decades. Illegal immigration across the Mexican border appeared in the 1920s, dropped off during the Depression, and then reappeared in the late 1940s. In the fifties, the INS deported one million illegal aliens under Operation Wetback, thus apparently "solving" the problem. Congress meanwhile revised the system for legal immigration with the Immigration and Nationality Act of 1952, the act still on the books in 1986. The sixties saw more legal immigration reforms and an end to the Bracero program which brought in temporary farmworkers from Mexico.

Concern about illegal immigration re-emerged in the early 1970s. The House of Representatives twice passed legislation sponsored by Congressman

Rodino, and supported by the Nixon Administration, penalizing employers for hiring illegal aliens. (The 1952 Act specifically exempted employment of illegal aliens from penalty.) A 1975 House bill, which died in the Rules Committee, added legalization of status (popularly known as "amnesty") for certain illegal immigrants in the U.S. The Senate finally held hearings in 1976 on a bill containing employer sanctions and amnesty but took no further action. President Ford created a Domestic Council Committee on Illegal Aliens which recommended employer sanctions, better enforcement of existing barriers and some form of amnesty. The Carter Administration called for similar action but its legislative proposals went nowhere. In 1978 a seemingly frustrated Congress created the Select Commission on Immigration and Refugee Policy to review immigration and refugee policy as a whole. The Commission, a bipartisan group drawn from the Congress, the Administration and the general public, issued a report in March 1981 recommending employer sanctions, improved law enforcement, amnesty and changes in the legal immigration system.

A new administration took office before the Select Commission made its final report. After a Cabinet-level Task Force reviewed the Commission's report, the Reagan Administration announced its proposals for immigration reform in July 1981. The basic outline differed little from the ideas of the previous decade; in addition to employer sanctions, better enforcement and amnesty, the Administration proposed a pilot program for temporary workers from Mexico. After extensive hearings on the Administration's proposals, Senator Simpson, chairman of the Senate Judiciary Subcommittee on Immigration, and his House counterpart, Congressman Mazzoli, introduced identical bills in March 1982. The

Administration did not object to the replacement of its proposal and generally continued to support the Simpson-Mazzoli bill until its eventual enactment, in amended form, as the IRCA.

The Simpson-Mazzoli bill still faced several obstacles. Passed by the full Senate in August 1982, it died in the House during the December lame-duck session, with 300 amendments proposed. By this time the two bills had evolved separately, and they were reintroduced by their sponsors, in two different forms, in early 1983. The Senate passed the bill again in May. After four different House committees amended the bill, Speaker O'Neill delayed floor action, saying he feared a veto by President Reagan. The House finally passed the bill in June 1984, but the House-Senate conference ended in deadlock, ostensibly over the issue of reimbursement to states for the costs of legalization. In 1985 the Simpson-Mazzoli bill rose from the dead as Simpson-Rodino-Mazzoli, after being introduced, in amended versions, by Simpson and House Judiciary Committee chairman Rodino. Again the Senate passed the bill within a few months. The House, after a lengthy fight dominated by the agricultural labor issue, passed its bill in October 1986. This time the conferees reached agreement, and the bill finally became law.

How useful are Allison's models in examining the process of creating policy on illegal immigration? I will start with the Rational Policy model, which has the least relevance in this case, and then examine the Organizational Process and Bureaucratic Politics models.

Under the Rational Politics Model, the government acts as a rational, unitary decisionmaker with one set of goals, a range of alternative options and an understanding of the consequences of each option. If action is taken, it is because that action was the option which did the most to advance the goals. Policymaking in the field of immigration

reform, and development of the IRCA in particular, bears little relation to this model due to the general lack of agreement on the goals, options and consequences. In fact, there is even disagreement on the problem.

By the late 1970s, there appeared to be consensus in the executive and legislative branches, and among the general public, that the U.S. had a problem with illegal immigration. INS apprehensions of illegal aliens rose dramatically but represented only a fraction of those who managed to slip in. The large flow of IndoChinese refugees, followed by 130,000 Mariel Cubans, thousands of Haitian "boat people," and "disappearing" Iranian students fueled a growing perception that the U.S. had lost control of its borders. For the Select Commission and its congressional supporters, gaining control over illegal immigration was essential to prevent a backlash against legal immigration.

Acknowledgment of the problem did not mean, however, that anyone knew for sure how big the problem might be. Estimates of the size of the illegal population ranged from 3.5 to 6 million, sometimes higher. Illegal aliens, by their very nature, are difficult to find, and the various government agencies who collected statistics did so for differing purposes and with different definitions. Beyond the "numbers" problem, there was no conclusive study, and no consensus, on the impact of illegal aliens on the U.S. economy and society. Did illegal aliens take jobs from Americans or did they help the economy by taking jobs Americans refused to do? Were illegal aliens a drain on public services or did they contribute more in taxes than they received in benefits? Was the presence of an exploitable underclass a danger to U.S. society and values?

With no agreement on the problem, there also was no agreement on the solution. Although the "link" between sanctions and amnesty appeared early and consistently, both proposals drew steady opposition. Business

groups opposed employer sanctions, as did Hispanics and civil liberties groups, who feared employers would refuse to hire anyone who looked "foreign." Organized labor saw sanctions as protection for American workers. Amnesty drew praise as a humanitarian solution and criticism as a reward for scofflaws. About the only major provision of the reform proposals that did not attract controversy was increased funding for INS.

Underlying the lack of consensus on how to curb illegal immigration was a general lack of goals for immigration policy as a whole. U.S. immigration law allows certain numbers of immigrants to come each year, but those figures are not based on any agreement about how many immigrants the U.S. needs or can support. Immigration policy is scattered among several Cabinet departments (Justice, State, Labor, Agriculture, HHS), none of which has immigration policymaking as a *raison d'être*.

Without agreement on overall goals, the extent of the problem or the efficacy of policy options, the Rational Policy model is of little use in helping to explain the immigration reform policy process. As a last comment on the model in this context, I would note that neither the nation nor the government functioned as a unitary decisionmaker. In the case of the government, the divisions in the 1980s were largely within Congress, although disagreements also occurred at times between the White House and the House of Representatives.

The Organizational Process Model is of more utility in looking at the IRCA, particularly in examining the impact of congressional structure. The fact that Congress is an elected body influenced the policy process. The Republican "capture" of the Senate in 1980 allowed Senator Simpson to become chairman of the Judiciary Subcommittee on Immigration. Simpson is widely credited as the main force responsible for eventual passage of the IRCA. His position as a subcommittee chairman undoubtedly played a role

(although perhaps not as decisive a role as it might have since the ranking Democrat, Senator Kennedy, also had a strong interest in immigration reform). When Speaker O'Neill delayed floor consideration in 1983, he said he was concerned that President Reagan would veto the bill in order to win Hispanic support during the 1984 elections. O'Neill reversed his decision soon after but delayed action again the following spring until after the California primary. When the 1984 conference finally met, there was little time left before the end of the session, although some Congressmen felt agreement would not have been reached anyhow. Many members apparently preferred to see the controversial bill die rather than have to defend their position in the upcoming elections.

Following IRCA through the process also reveals the key role that organizational structure often allows individuals to play. Committee and subcommittee chairmen have been crucial to immigration reform. Looking at who filled which key positions when often helps explain what eventually happened. In the 1970s the Senate took no action. Judiciary Committee Chairman Eastland was a conservative viewed by many as sympathetic to agricultural interests who felt the status quo best guaranteed a continued supply of cheap labor. Simpson found it politic to drop proposed changes to the legal immigration system when it became clear that House Judiciary Chairman Rodino opposed such changes. When Rodino appeared as introducer of the House bill in 1985, most observers took this as a sign that he was now committed to moving the bill, a significant step in increasing its chances of final passage.

The fact that the House became the center of conflict was partially due to its makeup in the 1980s and that of the Senate. The latter had no

Hispanic members and was controlled by the Republican party, generally viewed as less sympathetic to the causes promoted by minority and civil liberties groups.

Simpson and Mazzoli were aware of possible problems that could arise due to various differences built into Congress as an organization. They tried to avoid as many of these differences as possible. Although they expected different final bills to pass in each house, starting with identical bills gave some hope of minimizing those final differences. Simpson and Mazzoli maintained a bipartisan front throughout the process, which they started with joint hearings, the first between the Senate and House Judiciary committees in thirty years. Simpson encouraged opponents of the proposed reforms to testify at the various hearings, apparently hoping that the process would produce ideas for overcoming objections. In the end, everyone could feel they had had a fair hearing. The debate was about issues not about fairness of the decision process.

Unlike earlier struggles over immigration policy, the IRCA process was not generally characterized by legislative-executive conflict. There were occasional delays due to mistrust of a Republican President by the Democratic House but these were resolved. The 1984 conference failed when the President threatened a veto over costs, but it appears the real reason was pressure from agricultural interests upset by conference decisions.

The IRCA process does demonstrate the role that might be played by a new organization outside the normal structure. Those who sponsored the Select Commission in 1978 hoped it would help to create a consensus on immigration reform. Its existence also allowed Congress to avoid the charge of having done nothing on immigration and provided a body that could either take the political heat if nothing further happened or take the blame for unpopular ideas. The Commission did not develop new ideas

but was important in giving legitimacy to already-existing proposals that became the basis for IRCA. In some instances, creating a new organization is merely an exercise in passing the buck. In the case of immigration reform, it probably helped speed up the legislative process. The Select Commission also had the effect of "unleashing" Senator Simpson when he was "volunteered," as the junior Republican on the Judiciary Committee, for a Commission spot that no one wanted.

In the end, though, does the Organizational Process model really explain why the IRCA came out the way it did? The answer is no. Looking at the complexity of the issues in 1981, the lineup of interest groups opposed to various proposals, and the difficulty Congress often has in dealing with controversial issues, one might have predicted that legislation would not pass for many years. The Organizational Process model does not explain much of why the IRCA finally did pass; for this we need the Bureaucratic Politics Model.

The IRCA in its final form is a masterpiece of political compromise. It is doubtful that anyone who voted for it was happy with everything in the bill or expected it to come out as it did. But in the end a majority found provisions that they liked enough to vote for the entire package. And the IRCA was clearly a package deal. The link between sanctions and amnesty began in the mid-70s. When the Reagan Administration introduced its proposals in 1981, executive branch officials made clear that they considered sanctions, amnesty and enforcement to be inseparable. Amnesty would straighten up the current situation in the cheapest, most humane way, while sanctions and better enforcement would prevent a similar situation in the future. The two "sides" of this deal appealed to

different parts of the political spectrum. Amnesty alone did not enjoy majority support in public opinion polls, but without it key supporters and votes would have been lost.

While the basic package was clear early on, the final shape of the programs arose through bargaining between the two houses and the administration. Bills differed on things such as the cutoff date to qualify for amnesty, whether to include criminal penalties in sanctions and how to treat small businesses. Throughout the IRCA sections were added to satisfy specific interests. A requirement that those receiving amnesty study English and U.S. history before gaining permanent residence helped win support from House Majority Leader Wright. One section of IRCA which creates a new class of immigrants is generally viewed as "aid to the Irish," an important consideration for Speaker O'Neill among others. The State Department pushed hard for a section setting up a nonimmigrant visa waiver pilot program. Issues too "hot" to handle, even with deals, disappeared. Under the IRCA, employers could check various documents in order to determine whether new employees had legal status in the U.S. An early proposal to create a new tamperproof national identity card for workers attracted intense opposition from those concerned about expanding government control. Similarly, neither the Select Commission nor Congress chose to tackle revisions in sections of the 1952 Act which acted to exclude Communists, homosexuals and other "undesirables" from the U.S.

As amendments came and went, supporters and opponents shifted. The process of trying to advance or stop the IRCA created strange bedfellows. Liberal Hispanic groups, the National Association of Manufacturers and the Chamber of Commerce found themselves on the same side based on opposition, for different reasons, to employer sanctions. Organized labor moved back and forth as different provisions were added or deleted during the

process, as did certain business groups. When the bill passed the Senate in 1985, the opponents included Senators Cranston and Kerry on one end and Senator Hatch on the other. Senator Simpson's willingness to compromise had him working closely at one point with Congressman Schumer, a liberal Democrat who played a key role in the last compromises in 1986.

As mentioned already in the context of organizational position, the role of personalities like Simpson, Mazzoli and Rodino in the process was important. Simpson and Mazzoli in particular were interested in the issue, held the two key subcommittee chairmanships and came from districts (Wyoming and Kentucky) where immigration was not a major issue, thus reducing the potential pressure from home. Simpson worked closely with Attorney General Smith, who was able to bypass OMB when necessary to get proposals to the Hill. Unlike Allison's description of players, people like Simpson did seem to have a broader view of goals; they were not just solving the immediate problem. Proposals to change legal immigration resurfaced (after Rodino retired) and became law in the fall of 1990.

In the end the most powerful interest group was agriculture, particularly the Western growers. They wanted a continued supply of cheap, temporary labor at harvest time and would not support the IRCA without some "replacement" for the illegal workers which sanctions were supposed to deter. The issue of temporary agricultural workers surfaced repeatedly throughout the IRCA process, and various amendments tried to satisfy the growers. When one of these amendments was dropped in the 1984 conference, the California conferees came under pressure to kill the bill by refusing to accept other changes needed to avoid a presidential veto. Votes changed and the bill died. By 1985 opposition to other parts of IRCA had either been satisfied with amendments or proven unable to stop the bill. The question of agriculture then dominated debate in both

houses. In the fall of 1986, the bill again appeared to be dead in the House due to arguments over agricultural workers. A last-minute compromise which legalized certain agricultural workers, and promised future temporary workers in the event of shortages, satisfied those concerned about labor shortages and those worried about exploitation of farmworkers, thus gaining the remaining votes needed for passage.

As the IRCA process shows, one policy process model alone is not enough to fully explain the resulting legislation. Perhaps the nature of immigration policy--including the strong role traditionally played by Congress, the lack of underlying consensus and the resulting controversy over issues--makes it inevitable, however, that the bureaucratic politics model comes closest to explaining how we determine who will be future Americans.

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